

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6932 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

BHAGWATIBEN W/O VITHALBHAI N PANCHAL

Versus

KAMAXI INDUSTRIES

Appearance:

MR TR MISHRA for Petitioner

MR SA DESAI for Respondent No. 1

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 21/11/98

ORAL JUDGEMENT

By way of this Special Civil Application, the petitioner has challenged the order dated 28.5.1998 in Misc.Civil Application No.292 of 1997, whereby the Judge, Labour Court, Ahmedabad restored the Reference No.1588/89 on 23.8.1993.

2. Necessary facts are that the husband of the petitioner namely; Vithalbhai M Panchal was removed from

service and as such industrial dispute was raised which culminated in Reference to the Labour Court, Ahmedabad being LCA No.1588/89. The respondent-Company did not put in appearance. The Labour Court passed ex-parte award dated 23.8.1993 directing reinstatement with full backwages. As the award was not complied with, the Payment of Wages Application was filed. The authority passed order dated 27.12.1995 directed the respondent to pay a sum of Rs. 42,696/- + 500/- towards cost. This order was also not complied with. A certificate was issued to the District Collector on 1.6.1996 to recover the aforesaid amount of Rs.43,196/-. The District Collector took action to recover the amount in the year 1997. The respondent company filed an Application under Section 26-A of the Rules of 1966. The Judge, Labour Court allowed the application for restoration on the ground that the Company has constitutional right to defend the reference. The Court accordingly restored the reference on a payment of cost of Rs.3,000/-.

3. It is argued by Mr T R Mishra, learned Advocate for the petitioner that though the award was made as back as on 23.8.1993, the application for restoration was filed almost after 4 years. During this period, the workman died on 13.10.1996. No reason whatsoever nature has been given by the respondent company for non-appearance before the Labour Court. The learned Advocate further submits that the Labour Court, under section 26-A of the Rules, can restore only in case where sufficient cause for non-appearance is shown. On the other hand, learned Advocate appearing for the respondent-Company submits that instructions were given to the Lawyer but he had not appeared. The Company could not appear on account of the negligence on the part of the Lawyer.

4. I have considered the rival contentions. The Labour Court has committed error in considering that a party has absolute right to defend. It is of course true that a party has right to defend but if it does not choose to appear, such a right cannot be asserted later on. No affidavit has been filed by the concerned Lawyer indicating the reasons for his non-appearance before the Labour Court. In view of this, though normally it is not for this Court to interfere with the discretionary order passed under Section 26-A of the Rules, as there is a manifest error, inasmuch as there exist no reason for restoration, I am inclined to interfere with the matter.

5. In view of the aforesaid, this Special Civil Application is allowed and the order of the Labour Court

dated 28.5.1998 passed in Misc.Civil Application
No.292/97 is quashed and set aside. Rule made absolute.

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msp.